IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CASE NO. 5:18-CR-74 (MTT)**
	)	
RONNIE LEE HUGHES,	)	
	)	
Defendant.	)	
	)	

ORDER

Defendant Ronnie Lee Hughes, who has been charged with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1), has moved to suppress evidence found in his vehicle, primarily the firearms he possessed. Doc. 30. The Court held an evidentiary hearing on May 13, 2019.[1] Docs. 45; 52. Hughes then filed a supplemental brief following the May 13 hearing; the Government did not. Doc. 55. For the following reasons, the motion (Doc. 30) is **DENIED**.

I. BACKGROUND

On August 30, 2016, a confidential informant was performing construction work on Hughes' property when he saw multiple firearms in Hughes' home. Hughes, who the CI knew was a convicted felon, told the CI that he wanted to sell them. Later that day, the CI, unprompted, contacted Lamar County Sheriff Sergeant Jeremy Haire and told him that Hughes was a convicted felon who wanted to sell his firearms that were in his home. The CI showed Sgt. Haire text messages he received from Hughes regarding

[1] At the evidentiary hearing, arresting officer Sergeant Jeremy Haire testified, and the Government introduced dashcam video of the arrest (Government's Ex. 1). The Government established the facts stated in this Order by a preponderance of the evidence.

the firearms he wanted to sell, including pictures of the firearms, their cases, and ammunition, and the prices. Sgt. Haire, who had previously worked with the CI on multiple successful arrests and prosecutions, ran Hughes' criminal history and confirmed Hughes was a convicted felon. Sgt. Haire and other officers then drove to Hughes' home with the CI where the CI identified Hughes' home and vehicle. The officers ran the tag number on the back of the vehicle in Hughes' driveway to confirm it belonged to Hughes. Sgt. Haire then worked with the CI to set up an undercover gun deal with Hughes for the following day.

On August 31, Sgt. Haire, with the permission of the CI, listened to a phone conversation between the CI and Hughes in which Hughes stated that he "didn't want [the gun deal] to be a set up [where] any cops were involved" and that he "didn't want to have to shoot somebody." The CI confirmed the time and location for the sale to take place and that Hughes would have the guns with him. While Hughes was en route to consummate the gun deal, Sgt. Haire and other officers stopped and conducted a warrantless search of Hughes' vehicle.[2] During the search, the officers found cases in the rear of Hughes' hatchback containing the same firearms, cases, and ammunition in the pictures provided by the CI. Hughes was arrested for violating O.C.G.A. § 16-4-1 and § 16-11-131.[3] On October 30, 2017, the charges against Hughes were dismissed

[2] Sgt. Haire testified that he had time to procure search and arrest warrants but chose not to do so.

[3] O.C.G.A. § 16-11-131 makes it unlawful for a person who is on probation for a felony offense to possess a firearm, and § 16-4-1 makes it unlawful for someone to perform "any act which constitutes a substantial step toward the commission of [a] crime."

on speedy trial grounds. Doc. 24 at 1. On December 12, 2018, Hughes was indicted by the Government for the same conduct in violation of 18 U.S.C. § 922(g)(1).[4] Doc. 1.

II. MOTION TO SUPPRESS STANDARD

The burden of proof at a suppression hearing is by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974). "A preponderance of the evidence simply means an amount of evidence that is enough to persuade the Court that the existence of a fact is more probable than its non-existence." *United States v. Vegal-Cervantes*, 2015 WL 4877657, at *13 (N.D. Ga. 2015) (citing *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 137 n.9 (1997)). The burden of producing evidence and the burden of persuasion are typically on the moving party. *Rogers v. United States*, 330 F.2d 535, 542 (5th Cir. 1964).[5] But "[u]pon a motion to suppress evidence garnered through a warrantless search and seizure, the burden of proof as to the reasonableness of the search rests with the prosecution. The Government must demonstrate that the challenged action falls within one of the recognized exceptions to the warrant requirement, thereby rendering it reasonable within the meaning of the [F]ourth [A]mendment." *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983) (citation omitted).

III. DISCUSSION

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against

[4] Section 922(g)(1) makes it unlawful for a person who has been convicted of a felony to transport, receive, or possess any firearm. 18 U.S.C. § 922(g)(1).

[5] The Eleventh Circuit has adopted as binding precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

unreasonable searches and seizures[.]" Evidence obtained as a result of a Fourth Amendment violation is subject to exclusion. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963). Warrantless searches "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978).

A. The Warrantless Search of Hughes' Car

Hughes claims the officers stopping his vehicle lacked probable cause to search and should have first obtained warrants.[6] Generally speaking, a warrantless search requires exigent circumstances and probable cause. *United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (citation omitted). The Court assumes Hughes' criticism of the officers' failure to get warrants is really an argument that no exigent circumstances were present. However, the mobility of a car, alone, constitutes an exigent circumstance. *Maryland v. Dyson*, 527 U.S. 465, 467 (1999); *see also California v. Carney*, 471 U.S. 386, 390-91, 392-93 (1985) (citing *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (holding that because a vehicle is relatively open to plain view, there are lesser expectations of privacy); *Carroll v. United States*, 267 U.S. 132, 153 (1925) (holding that the mobility of a vehicle creates an exigency that can override the warrant requirement) (other citation omitted)); *Coolidge v. New Hampshire*, 403 U.S. 443, 524 (1971) ("[P]ractically since the beginning of the Government," courts have held that "searches of vehicles on probable cause but without a warrant [are] reasonable within the meaning of the Fourth Amendment" and do not require "proof of exigent circumstances beyond the fact that a movable vehicle is involved." (internal quotation

[6] Hughes has not challenged his arrest; he has only challenged the lawfulness of the search of his vehicle. *See generally* Docs. 30; 55.

marks and citations omitted)). Hughes was driving his vehicle when it was searched, and his vehicle was clearly "movable." Exigent circumstances were thus present.

The question then is whether the officers had "probable cause to believe that the vehicle contain[s] evidence of crime." *California v. Acevedo*, 500 U.S. 565, 569 (1991) (citing *Carroll*, 267 U.S. at 158-59). Whether an officer acted on probable cause is based on the common-sense interpretations of reasonable police officers that "there is a fair probability that contraband or evidence of a crime will be found in a particular place" at the time of the search. *Illinois v. Gates*, 462 U.S. 213, 230 (1983). When there is probable cause to search a vehicle, the scope includes containers in the vehicle where there is probable cause to believe contraband exists. *United States v. Ross*, 456 U.S. 798, 824 (1982).

Hughes argues that the officers did not have probable cause to search his vehicle based on the information provided by the CI because the CI was unreliable. Doc. 55 at 5. Information provided by an informant should be considered with care, but the information "still may provide or contribute to a basis for finding probable cause . . . if, in the totality of the circumstances, the information is sufficiently reliable." *United States v. Wilkins-01*, 2014 WL 3099751, at *6 (N.D. Ga. 2014) (citing *Ortega v. Christian*, 85 F.3d 1521 (11th Cir. 1996)). Specifically, and only, Hughes argues that the CI is unreliable because he is a convicted felon and was paid by the Lamar County Sheriff's Office for the information he provided. Doc. 55 at 5.

The following factors should be considered in assessing the reliability of an informant's statements: Whether the informant made a statement against his penal interests; whether there is a past history between the informant and the police

department supporting his reliability; whether the informant had personal knowledge; and whether there was independent police work to investigate and verify the tip. *Ortega*, 85 F.3d at 1525. An "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles the [informant's] tip to greater weight than might otherwise be the case." *Gates*, 462 U.S. at 234. Observations and other information supplied by officers to corroborate an informant's tips "can, taken together, create probable cause for a search." *United States v. Goddard*, 312 F.3d 1360, 1363 (11th Cir. 2002) (citation omitted).

In this case, there are several factors that weigh heavily in favor of the CI's credibility. Sgt. Haire testified that since 2014, the CI has provided reliable information regarding criminal activity, resulting in arrests and successful prosecutions. With regard to the CI's personal knowledge, Sgt. Haire testified that the CI had recently visited Hughes' home where the CI saw the firearms, and that the CI had shown Sgt. Haire his text messages with Hughes in which Hughes provided pictures of the firearms, cases, and ammunition and stated he intended to sell them.

Although not essential to establish probable cause, officers corroborated the CI's tip. *United States v. Brundidge*, 170 F.3d 1350, 1353 (11th Cir. 1999) (citations omitted). First, Sgt. Haire confirmed that Hughes was a convicted felon. The CI then worked with Sgt. Haire to set up the sale of the firearms from Hughes. He accurately provided Hughes' location, identified Hughes' vehicle, and described where Hughes was going the day of the search. Officers also confirmed part of the CI's tip as to Hughes' identity and location when the officers observed Hughes and his vehicle at his home before the encounter. Further, Sgt. Haire testified that a few hours prior to

searching Hughes' vehicle, Sgt. Haire listened to a phone conversation in which Hughes said he "didn't want [the sale] to be a set-up [where] any cops were involved" and that he "didn't want to have to shoot somebody." These observations independently corroborated the CI's tips that Hughes was a convicted felon in possession of a firearm.

Hughes' argument that the CI was unreliable because he has a criminal history and was paid by the Sheriff's Office is not persuasive. Of course, it is not all uncommon that informants are paid or that they have criminal records. Criminal experience can be the reason an informant is in a position to gather information about criminal activity. The facts that an informant is paid and has a criminal history will not automatically negate probable cause unless there is evidence that the officers selected the person against whom the informant will direct his efforts or payment was contingent upon conviction. *See United States v. Richardson*, 764 F.2d 1514, 1520 (11th Cir. 1985) (citation omitted); *see also United States v. Mobley*, 2018 WL 2329783, at *4 (S.D. Ga. 2018), *report and recommendation adopted*, 2018 WL 3029107 (S.D. Ga. 2018) (citations omitted). There is no evidence that the officers directed the CI to focus on Hughes or that the CI's payment was contingent upon Hughes' conviction.

The Court finds that the CI, despite his criminal history and compensation by the Sheriff's Office, was credible and provided probable cause to search Hughes' vehicle and all containers therein. The ammunition, firearms, and cases in which they were found are thus not subject to the exclusionary rule.

B. Plain View Exception

Even if the officers lacked probable cause to stop and search Hughes' vehicle or even if, as Hughes seems to argue, the officers should have first obtained a search

warrant, Hughes' motion lacks merit. The plain view doctrine is an exception to the Fourth Amendment warrant requirement. *Horton v. California*, 496 U.S. 128, 136-37 (1990). "[T]he warrantless seizure of an item is permissible where (1) an officer is lawfully located in the place from which the seized object could be plainly viewed and must have a lawful right of access to the object itself; and (2) the incriminating character of the item is immediately apparent." *United States v. Folk*, 754 F.3d 906, 911 (11th Cir. 2014) (internal quotation marks and citation omitted).

The CI's tips, at the very least, provided reasonable suspicion. *See United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990) (citation omitted) (stating that reasonable suspicion requires less suspicion of wrongdoing than probable cause). Police may stop and detain a person briefly to investigate a reasonable suspicion that the person is engaged or about to engage in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 8 (1968); *United States v. Sharpe*, 470 U.S. 675, 682 (1985) (extending *Terry* stops to vehicles). Reasonable suspicion exists when "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27.

The officers reasonably believed that Hughes was engaging in criminal activity based on the CI's tips that Hughes was a convicted felon in possession of firearms. Furthermore, a reasonably prudent person would likely believe that his or others' safety was in danger as Sgt. Haire did when Hughes told the CI that he "didn't want to have to shoot somebody" during the gun deal. The officers were thus lawfully located outside of Hughes' vehicle during the stop based on reasonable suspicion.

After stopping Hughes' vehicle, Sgt. Haire testified that he and the other arresting officers saw the firearm cases (one of which was a rifle case) that the CI had provided pictures of in plain view in the rear of Hughes' hatchback through the windows. The incriminating nature of the firearms was immediately apparent because the officers had knowledge of Hughes' criminal history, and "[a] firearm that reasonably appears to be in the possession of a convicted felon qualifies as contraband—and is therefore subject to seizure under the plain view doctrine." *Folk*, 754 F.3d at 912 (footnote and citations omitted); *see also United States v. Kendricks*, 758 F. App'x 687, 691 (11th Cir. 2018) (citation omitted). Furthermore, when officers have a reasonable suspicion that a gun crime has been or is being committed and they observe a gun case that they believe contains firearms in plain view, the case is subject to search and seizure under the plain view doctrine. *United States v. Simpson*, 259 F. App'x 164, 166-67 (11th Cir. 2007). Of course, here the officers knew specifically, based on the CI's tips, that the cases likely contained firearms. Accordingly, the firearm cases containing firearms and ammunition that were found in Hughes' vehicle were subject to search and seizure.

Hughes argues that the officers could not have possibly seen the firearm cases because his windows were heavily tinted. Doc. 55 at 6. At the suppression hearing, Hughes invited the Court to view the windows of his vehicle parked outside of the courthouse. The Government objected on the grounds that it had been over two years since the search and there was no evidence that the tint now was the same then. Although the Court looked at Hughes' vehicle, the Court sustains that objection and offers no view on whether, under the conditions as they existed on May 13, 2019, the officers could see through the tinted windows. Based on Sgt. Haire's testimony and the

dashcam video (Government's Ex. 1), the Courts finds that the officers could have seen the firearm cases in plain view through the windows.

C. Inevitable Discovery

Even if it could be argued that the officers should have obtained a search warrant, the officers nevertheless had probable cause to arrest Hughes for the same reasons that the officers had probable cause to search the vehicle.[7] Because Hughes was arrested, his vehicle had to be impounded. Sgt. Haire testified that it was the Lamar County Sheriff's Office's policy to conduct an inventory search of impounded vehicles. A warrantless routine inventory search of a lawfully impounded car—and all containers found therein—is reasonable under the Fourth Amendment, even if it is conducted in the absence of probable cause. *South Dakota v. Opperman*, 428 U.S. 364, 371, 383 (1976). Thus, the firearms would have been inevitably discovered and lawfully seized during the inventory search of Hughes' vehicle. *See*, *e.g.*, *Nix v. Williams*, 467 U.S. 431, 443-44 (1984) (discussing the "inevitable discovery" exception to the exclusionary rule).

IV. CONCLUSION

The Government has proven by a preponderance of the evidence that the warrantless search of Hughes' vehicle and seizure of Hughes' firearms were reasonable under the Fourth Amendment. Hughes' motion to suppress (Doc. 30) is thus **DENIED**.

SO ORDERED, this 2nd day of July, 2019.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

[7] Of course, because the officers had probable cause to arrest Hughes, they were lawfully at the side of his vehicle, and thus the plain view doctrine applies here as well.